

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

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O.A. No. 1667/97
T.A. No.

199

5-12-97

DATE OF DECISION

Shri Subodh Singh	Petitioner
Shri Shankar Raju	Advocate for the Petitioner(s)
VERSUS	
UDI & Ors	Respondent
Sh. Arun Bhardwaj	Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble S.P. Biswas, Member (A)

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1667/97

At New Delhi this the 5th day of December, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

(X)

Subodh Singh Roll No. 3115,
S/o Shri Sukhbir Singh,
R/o Village- Subrithali,
PO - Jhijhana,
Distt. Muzzaffar Nagar (UP). ... Applicant.

By Advocate Shri Shanker Raju.

Versus

1. Union of India,
through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Dy. Commissioner of Police,
2nd Bn. DAP,
Kingsway Camp,
Delhi. ... Respondents.

By Advocate Shri Bhaskar Bhardwaj, proxy for Shri Arun Bhardwaj.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the order passed by Respondent 2 dated 27.2.1996 whereby his candidature for the post of Constable (Executive) was cancelled, on the ground that he had concealed the relevant facts concerning his involvement in criminal cases for getting the job in Delhi Police. His representation against the cancellation of his appointment to the post of Constable (Executive) was rejected by memo dated 8.5.1997.

2. The brief facts of the case are that in pursuance of the Special Recruitment held by Delhi Police at Moradabad (UP) for the post of Constable (Executive) in September, 1995, the applicant applied for the same, as

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according to him, he had fulfilled all the eligibility conditions and he was selected. In the subsequent police verification, it was revealed that the applicant was involved in two criminal cases and hence his candidature was cancelled. The learned counsel for the applicant submits that the applicant had been falsely implicated in the criminal cases due to a family dispute and subsequently he had been acquitted in the criminal cases. Thereafter, he had made a representation to the respondents to consider him for appointment as there was no stigma attached on him as he had been acquitted on merits. This representation had been rejected by the impugned memo dated 8.5.1997. He relies on the judgement of this Tribunal in Virender Pal Singh Vs. Commissioner of Police & Anr. (O.A. 1446/95), decided on 22.11.1996 and submits that the applicant is identically situated as the applicant in that case and hence he should also be offered an appointment. On appeal to the Supreme Court by the respondents (Civil Appeal No. 5510/97), the Supreme Court has dismissed the appeal by order dated 11.8.1997. In this order, it has been held that since the respondents had selected the applicant, therefore, before cancelling the selection in all fairness they should have given him a show cause notice. The order of the Tribunal was set aside and the appellants were directed to give a show cause notice to the respondent - Virender Pal Singh - and to pass a suitable order after considering his response to the show cause notice. Shri Shanker Raju, learned counsel, has urged that following this judgement of the Supreme Court, the cancellation of the applicant's appointment should be set aside and he should atleast be given a show cause notice. He also relies on the

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judgements of the Supreme Court and the Tribunal in Pawan Kumar Vs. State of Haryana (JT 1996(5) SC 115), Shish Pal Vs. Union of India & Ors. (1993(25) ATC 311), Satyender Singh Maan Vs. Commissioner of Police and Anr. (1993(25) ATC 274) and Girish Bhardwaj Vs. Union of India & Ors. (AISLJ 1989(4)(CAT) 945). The learned counsel also submits that under Rule 6 of the Delhi Police(Appointment and Recruitment), Rules, 1980, there is no bar to a person with criminal records being appointed to the police service.

3. The respondents have filed their reply controverting the above submissions and have submitted that the applicant is not entitled to any relief. They have submitted that the applicant did not mention the fact of his being involved in criminal cases in the relevant columns of the application form as well as the attestation form filled by him during the Special Recruitment held in 1995. Thus, their contention is that he had tried to seek appointment in Delhi Police by adopting deceitful means. They have also submitted that his representation had been considered by the competent authority and rejected. They have relied on the judgement of the Supreme Court in Delhi Administration & Ors. Vs. Sushil Kumar (Civil Appeal No. 13231 of 1996), decided in October, 1996 (copy placed on record).

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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5. In Commissioner of Police, Delhi and Anr. Vs.

Virender Pal Singh (Supra), the Supreme Court had disposed of the appeal by the following order:

"Without laying down any law, in the facts of the case, we are of the view that in all fairness a show cause notice should be given. The order of the Tribunal is set aside. The appellants are directed to give a show cause notice to the respondent - Virender Pal Singh and to pass a suitable order after considering his response to the show cause notice. The appeal is finally disposed of".

The Supreme Court has further added that 'It is made clear that this order will not be treated as precedent and the same is passed only on the peculiar facts and circumstances of the case'. In view of this, it is necessary to consider whether a show cause notice is necessary to be issued to the applicant or not. Shri Shanker Raju, learned counsel has submitted that following this judgement of the Supreme Court, the applicant should ~~at least~~ be given a shown cause notice so that he could explain the matter, especially when he has been acquitted in the criminal cases. We are unable to agree with the contention of the learned counsel for the applicant in the particular facts and circumstances of the case. Apart from the fact that the Supreme Court has in the order dated 11.8.1997 in Virender Pal Singh's case (supra) stated that the order is not to be treated as precedent and the same is passed only on the peculiar facts and

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circumstances of the case, in the present case the impugned order dated 27.2.1996 is a reasoned and speaking order, the relevant portion of which reads as follows:

"You have been selected as Constable (Exe.) in Delhi Police subject to fulfil the condition, but you did not mention while submitted your application form as well as police verification form that you had been involved in criminal case FIR No. 95/93 u/s 380/411 IPC and 96/99 u/s 25/17 Arms Act P.S. Jhigena, Distt. Muzafer Nagar, U.P. later on you were acquitted by A.C.J.M. Marana dated 17.10.1995. Thus, you have concealed the facts deliberately and adopted deceitful means for getting job in Delhi Police. Hence, your candidature for the post of constable (exe.) in Delhi Police is hereby cancelled".

5. The applicant had also made a representation which had been disposed of by Memo dated 8.5.1997 in which reference has been made to the letter dated 27.2.1996.

6. The above order dated 27.2.1996 passed by the respondents shows that the respondents were very much aware that the applicant has been acquitted by the ACJM, Marana by order dated 17.10.1995 of the criminal charges in the two criminal cases. They have also given the reasons that as he had concealed the facts deliberately that he was involved in criminal cases while submitting his application and adopted deceitful means for getting the job in Delhi Police, they have cancelled his

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candidature. This order is a speaking and reasoned order and shows application of mind, as the relevant facts have been taken into account. The question, therefore, arises as to what purpose would be served by a show cause notice which has been urged vehemently by the learned counsel for the applicant in the facts of this case. The show cause notice is a part of the principles of natural justice to offer the applicant a reasonable opportunity to defend his case. In Managing Director, ECIL, Hyderabad Vs. B. Karunakar (JT 1993 (6) SC 1), the Supreme Court has held that the Courts/Tribunal should not "mechanically" set aside the order of punishment, on the ground that the Inquiry Officer's report was not furnished. The show cause notice ^{being} is a part of the principles of natural justice, and in this case the Supreme Court has held that even where the Inquiry Officer's report has not been furnished to the charged employee, the Court or Tribunal has to consider whether it would cause any prejudice to him. In this case, it was further held that to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. It was further held that 'the theory of reasonable opportunity and the principles of natural justice have been evolved to "uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion

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of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits". (Emphasis added)

The Supreme Court has held that in such circumstances it amounts to an "unnatural expansion of natural justice" which in itself is "antithetical to justice".

7. The issue, therefore, is whether in the context of the impugned order which gives the reasons for cancellation of candidature of the applicant, a show cause notice at this stage is necessary or it will amount to stretching the concept of justice to "exasperating limits". From the judgement of the Supreme Court in Virender Pal Singh's case (supra), it is seen that the allegation made by the respondents in that case was that the applicant had deliberately left blank the column in which he had to give the particulars of any criminal charge, which had misled them in selecting him for the post of Constable. In the particular facts and circumstances of that case while disposing of the appeal, the Supreme Court had directed the appellants to give a show cause notice to the respondent - Virender Pal Singh making it clear that this order has not to be treated as a precedent and was passed in the peculiar facts and circumstances of the case. In the present case, from the copy of the application form (English version placed in the file), it is seen that the applicant had categorically stated 'No' to the question in paragraph 11 relating to

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criminal cases pending against him at the time of filing the application. In the application form, a warning had also been given to the candidates in the following terms:

1. Any false information given in the proforma or any true information suppressed therein shall amount to the ineligibility of the candidate".
2. State if you have ever been detained/house arrested or convicted by any court or deprived of any thing. If so, such information be given to the Deputy Commissioner of Police, III Bn, DAP, Delhi-9 in detail as early as possible. Non-furnishing of such information, if any, shall amount to concealment of facts.
3. If it comes to light at any stage during the tenure of employment that you have given false information and have suppressed any material fact, you shall be liable to be terminated from the service".

Therefore, the applicant was well aware that any false information or suppression of relevant information will amount to his being declared ineligible. The contention of Shri Shanker Raju, learned counsel, that the applicant ought to be given a show cause notice is without basis as not only the fact that the applicant had concealed relevant facts at the time of filling the application form had been considered by the competent authority but also the fact that he had been acquitted of

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the criminal charge had been taken into account when the impugned order dated 27.2.1996 was passed. Therefore, to quote the Hon'ble Supreme Court, we are unable to see what different consequence would follow in the facts and circumstances of the case, by giving him a show cause notice at this stage and this ground is rejected.

8. In another case, Delhi Admn. and Ors. Vs. Sushil Kumar (Supra), the Tribunal in the impugned order had allowed the application on the ground that since the respondent had been discharged/acquitted of the offence punishable u/s 304 IPC read with Sections 324 and 34 IPC, he cannot be denied the right of appointment to the post under the State. While setting aside the judgement of the Tribunal, the Supreme Court has held as follows:

....It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of

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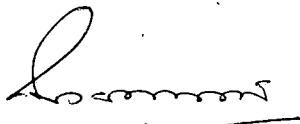
his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focussed this aspect and found him not desirable to appoint him to the service".

9. Having regard to the judgement of the Supreme Court in **Sushil Kumar's case (supra)**, we are of the view that the judgement of the Tribunal in **Satyender Kumar's case (supra)** can no longer be considered as law to be followed, or the contention of the learned counsel for the applicant that under Rule 6 of the Delhi Police (Appointment and Recruitment) Rules, 1980, even the conviction in a criminal case does not disentitle the person to be appointed in the Delhi Police, is tenable or acceptable. This would amount to rewarding the dishonest and the criminal at the cost of appointing other qualified, unemployed youth with clean records and antecedents. This judgement also supports the view that what is relevant for the competent authority to consider is the conduct or character of the candidate to be appointed to a service and not the actual acquittal of the candidate in the criminal cases. We respectfully follow the judgement of the Supreme Court in **Sushil Kumar's case (supra)** and what is of importance in such cases for the competent authority

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to consider is the antecedent of the candidate and we, therefore, do not find any legal infirmity in the impugned order dated 27.2.1996 wherein the competent authority has considered the antecedent of the applicant and taken into account the fact that he had concealed material facts at the time of applying and giving the attestation form for selection to the post of Constable in Delhi Police. Considering the fact that the Delhi Police is a disciplined force it cannot be held that the criteria adopted by the competent authority regarding the suitability of the applicant in the service is either unreasonable or arbitrary which justifies any interference in the matter. Having regard to the aforesaid judgements of the Supreme Court, the other judgements of the Tribunal, referred to above and relied upon by the learned counsel for the applicant / cannot assist the applicant. ^{also} There is no merit in the other contentions of the applicant.

10. In the result, we find no merit in this application which calls for any interference in the matter. The application is accordingly dismissed. No order as to costs.


(S.P. Biswas)
Member (A)

SRD


(Smt. Lakshmi Swaminathan)
Member (J)